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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MISSION SUPPORT ALLIANCE,
LLC, LOCKHEED MARTIN
SERVICES, INC., LOCKHEED
MARTIN CORPORATION, and
JORGE FRANCISCO "FRANK"
ARMIJO,

Defendants.

Case No. 4:19-CV-5021-RMP

UNOPPOSED MOTION FOR LEAVE
TO FILE EXHIBIT UNDER SEAL

Without Oral Argument
May 23, 2019 at 6:30 p.m.

UNOPPOSED MOTION TO SEAL

Defendant Jorge Francisco “Frank” Armijo respectfully moves the Court for an Order sealing his 2011 Lockheed Martin Management Incentive Compensation Plan objectives and evaluation (“2011 MICP Objectives”), which is attached as Exhibit 1 to Mr. Armijo’s Declaration in support of his Motion to Dismiss and Motion to Seal. Prior to filing this Motion to Seal, undersigned counsel consulted with the government, which confirmed it does not oppose this Motion to Seal the 2011 MICP Objectives, which contains sensitive, personal, confidential and proprietary information.

AUTHORITY

The Court may seal material filed in connection with a dispositive motion upon a showing of compelling reasons. *Kamakana v. City and Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (“[A]ccess to judicial records is not absolute.”); *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978) (“[T]he right to inspect and copy judicial records is not absolute.”). *see also Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1098-99 (9th Cir. 2016) (defining dispositive). The final determination of what constitutes a “compelling reason” is “best left to the sound discretion of the trial court.” *Nixon*, 435 U.S. at 599.

Here, compelling reasons exist to seal the 2011 MICP Objectives because it contains proprietary information that could hurt Lockheed Martin competitively and because it contains Mr. Armijo’s personal, confidential performance and compensation-related details, which are exempt from public disclosure.

1 In *Thoma v. City of Spokane*, 2013 WL 12170313 (E.D. Wa. Dec. 18, 2013),
2 the court held that “employment performance evaluations without instances of
3 misconduct are exempt from public disclosure, and accordingly shall be filed under
4 seal.” *Id.* at *1. In a separate order in that same case, the court sealed “two
5 employment performance evaluations of Plaintiff” because “[p]rotecting a public
6 employee’s personnel records, including otherwise-confidential performance
7 evaluations, is a compelling interest.” *Thoma v. City of Spokane*, 2013 WL 1346988,
8 at *3 (E.D. Wa. Apr. 3, 2013). Other district courts have reached similar conclusions.
9 See e.g., *Dynetix Design Solutions, Inc.*, 2013 WL 2285210, at *1 (N.D. Cal. May
10 23, 2013) (granting motion to seal because “[t]he personal performance review
11 contains sensitive personal information”); *Shimozono v. May Dep’t Stores Co.*, 2002
12 WL 34373490, at *16 (C.D. Cal. Nov. 20, 2002) (“Performance Reviews will remain
13 sealed.”); *Rich v. Shrader*, 2013 WL 6190895, at *2 (S.D. Cal. Nov. 26, 2013)
14 (sealing warranted for documents that “contain[ed] internal partnership evaluations,
15 management expectations and performance reviews, financial information, as well
16 as company strategies to improve employee performance and experience”).

17 Likewise, compelling reasons exist to seal the 2011 MICP Objectives, which
18 is a confidential document maintained in Mr. Armijo’s human resources personnel
19 file at Lockheed Martin. Decl. Armijo at ¶ 3. It contains sensitive, personal
20 information, including Mr. Armijo’s employee identification number and an
21 evaluation of his 2011 performance with Lockheed Martin. *Id.* ¶4. Specifically, it is
22 a four-page, single-spaced document describing Mr. Armijo’s achievements in
23 multiple assessment categories that affected his compensation. Decl. Armijo, Ex. 1.

1 And it has never been publicly disclosed. Decl. Armijo at ¶3. For these reasons, the
2 Court should permit the sealing of the 2011 MICP Objectives.

3 Additional compelling reasons exist to seal the 2011 MICP Objectives
4 because it contains proprietary information that could give Lockheed Martin's
5 competitors an unfair advantage. Courts protect sources of business information that
6 might harm a litigant's competitive standing. *Nixon*, 435 U.S. at 598. In response to
7 the government's civil investigative demand in connection with this case, Lockheed
8 Martin designated the 2011 MICP as "Confidential and Proprietary." Decl. Armijo
9 at ¶3. The 2011 MICP Objectives contain sensitive and proprietary Lockheed Martin
10 information. *Id.* ¶5. For example, it discusses numerous potential and realized
11 Lockheed Martin business opportunities as well as performance data and financials
12 for Lockheed Martin business components. *Id.* Redacting the document is not a
13 practical alternative to filing under seal because, as explained in Mr. Armijo's
14 motion to dismiss, the content of the document—which is quoted in the Complaint
15 and is central to the Anti-Kickback Act claim asserted against Mr. Armijo – is
16 important to contrast against the Complaint's allegations.

17 CONCLUSION

18 The Court should grant Mr. Armijo's unopposed motion and seal the 2011
19 MICP Objectives to protect its confidential, personal and proprietary contents. If the
20 Court has any hesitation about granting this unopposed motion, Mr. Armijo requests
21 leave to file supplemental support from all Defendants to further explain and detail
22 the compelling reasons to seal, and asks the Court not to un-seal the 2011 MICP
23 Objectives.

1 Dated this 23rd day of April 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2019, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF System which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

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